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## Blessings of Liberty

Earl Warren

*United States Supreme Court*

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# WASHINGTON UNIVERSITY LAW QUARTERLY

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## BLESSINGS OF LIBERTY\*

HONORABLE EARL WARREN†

The times in which we are living are not normal times. Powerful forces are at work in the world—both to preserve liberty and to extinguish it. The interplay of hope and fear, belief and doubt, determination and frustration keeps the affairs of mankind and the minds of people in a state of turbulence—a turbulence that destroys perspective and clouds the vision. Such times call for constant reflection and reappraisal. In the atmosphere of these surroundings, where men and women have devoted their lives to the pursuit of truth throughout an entire century,<sup>1</sup> we can more effectively detach ourselves for the moment from the complexities of everyday life in order to determine what our heritage of liberty is and what we are doing today to preserve it for our children and for those who come after them.

It is imperative that we do this. Notwithstanding the contributions of patriots through the centuries, the farsighted wisdom of the founding fathers or the written guarantees of the Constitution, liberty is not necessarily our permanent possession. Both external and internal pressure constantly assail it. It is axiomatic that every generation, to keep its freedom, must earn it through understanding of the past, vigilance in the present and determination for the future.

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\*This is the text of an address delivered Feb. 19, 1955, by the Chief Justice of the United States as the keynote speaker at the opening assembly of Washington University's Second Century Convocation. Chief Justice Warren's opening remarks were:

It is a thrilling experience to participate in the opening session of this Second Century Convocation of Washington University. The time, the place and the cause to which the convocation is dedicated make it an occasion of major importance. The campus of Washington University, enriched by a hundred years of devotion to the highest ideals of education and by the contribution of its thousands of alumni to the good life in America, provides an ideal place to reflect upon the "Blessings of Liberty." To do so at a centennial celebration, where the experience of the past, the events of the present and aims for the future can so appropriately be brought into balance, adds greatly to the content of the occasion.

† Chief Justice of the United States.

1. The reference is to Washington University which recently celebrated its one hundredth anniversary.

It is easier to know how to combat a foreign enemy who challenges our right to these freedoms and thus prevent a sudden collapse of the things we hold dear than it is to subject ourselves to daily analysis and discipline for the purpose of preventing the erosion that can with equal effectiveness destroy them. I say "easier" because Americans have never hesitated to make the choice between liberty and death. Normally we can rely upon our representatives in government to keep our defenses sufficiently strong to enable us to ward off outside attack, but we cannot delegate to any or all of our governmental representatives the full responsibility for protection of our freedoms from the processes of erosion. Such protection can be had only through an understanding on the part of individual citizens of what these freedoms are, how they came into being and whether their spirit dominates our institutions and the life of our country. The protection I speak of is that sense of strength and comradeship which flows from national unity, buttressed by freedom of thought, of expression, of mobility and of participation by all in the life and government of the nation.

I have no doubt it seems strange to some people that we take time to discuss such things almost two centuries after the adoption of the Constitution and its Bill of Rights. There are some who regard our freedoms merely as their birthright which they may simply take for granted. There are others who would never shrink from the loss of little freedoms—by the other fellow of course. And there are also those who would procrastinate until the deluge. The fact remains, however, that we do have a battle today to keep our freedoms from eroding, just as Americans in every past age were obliged to struggle for theirs. Many thoughtful people are of the opinion that the danger of erosion is greater than that of direct attack. I do not mean to suggest—nor do they, I am sure—that, outside of the totalitarian menace, any substantial group of our citizens would wilfully destroy our freedoms. But the emotional influence of the times coupled with the latent suspicion and prejudice inherent in human nature are capable of threatening the basic rights of everyone, unless those emotions are controlled by self-discipline, community spirit and governmental action.

A few days ago I read in the newspaper that a group of state employees—not in Missouri—charged with responsibility for determining what announcements could be posted on the employees' bulletin board, refused to permit the Bill of Rights to be posted on the ground that it was a controversial document. It was reported that the altercation became intense, and that only after the Governor, in writing, vouched for its non-controversial character was the Bill of Rights permitted to occupy a place along with routine items of interest to the state employees. And this happened in the United States of Amer-

ica on the fifteenth day of December, 1954—the 163rd anniversary of our Bill of Rights—declared by proclamation of President Eisenhower to be Bill of Rights Day.

It is straws in the wind like this which cause some thoughtful people to ask the question whether ratification of the Bill of Rights could be obtained today if we were faced squarely with the issue. They inquire whether we are as united today in defending our traditional freedoms as were the American people in asserting them during the first years of constitutional government in the United States. My faith in the sober second thought of the American people makes me confident that it would now be ratified. On the other hand, I am not prepared to dispute with those who believe the issue would provoke great controversy. Have we not had enough controversy over teaching in, and the conduct of, our colleges and schools, both public and private, to warrant the inference that an effort would be made to curb freedom of speech and thought in that important segment of American life? Have not sufficient doubts been expressed concerning the rights of individuals to invoke their constitutional privilege against self-incrimination to justify the belief that the proposed adoption of this safeguard against tyranny might provoke heated discussion? Does not the suspicion that has attached to lawyers who represent unpopular defendants indicate some departure from the constitutional principle that every person charged with crime is entitled to be effectively represented by counsel? Are there not enough shortcuts advocated—and too often practiced—in our time-honored legal procedures resulting in what we call a denial of due process of law? Have there not been enough invasions of the freedom of the press to justify a concern about the inviolability of that great right?

Departures from the letter and spirit of our constitutional principles are not the product of any one person or any one group of persons. They are more properly chargeable to the entire body politic—to the suspicion, hatred, intolerance and irresponsibility that stalk the world today, and also to a lack of appreciation of the age-old struggle of mankind to achieve our present-day blessings of liberty. Government—whether national, state or local—is not the sole culprit in this matter, for it does not operate in a vacuum. In the last analysis, it only reflects the mores, the attitudes and the state of mind of the dominant groups of society.

How do we come to have a Bill of Rights, and what is its significance in the history of this nation? The Bill of Rights, which became part of our fundamental law in December, 1791, does not by any means define all our rights. Many of our rights are to be found in the original Constitution, and others are formulated in later amendments. The Bill of Rights did not originate the rights which it guar-

antees. There was, at the time of its adoption, not a single novel idea in it. It did summarize, in a striking and effective manner, the personal and public liberties which Americans 164 years ago regarded as their due, and as being properly beyond the reach of any government, old or new.

The men of our First Congress knew, as we may be in danger of forgetting, that each element in the Bill of Rights was a painfully won acquisition. They knew that government must be neither too strong nor too weak; that whatever form it may assume, government is potentially as dangerous a thing as it is a necessary one. They knew not only that power must be lodged somewhere to prevent anarchy from within and conquest from without, but that this power could be abused to the detriment of their liberties. Confronted by this paradox, they turned to the experience of their forebears for counsel.

The English people, in their long struggle to control the monarchy founded by William the Conqueror, hit upon a happy solution: government should remain strong for its proper ends, but its strength should be kept within clearly defined limits. It became the consensus of the English people that certain acts should be clearly understood by all to be beyond the power of government and illegal if committed by any of its agents. Here we have the basis of the Anglo-Saxon legal and constitutional tradition.

The first great document in this tradition was the Magna Charta of 1215. Little was new in the Magna Charta. It merely recorded the rights which had been asserted, with varying success, against the Norman monarchy during the previous century and a half and, needless to say, there were reactions and backslidings in the five centuries that followed. But in the main the movement was forward—toward the accumulation of a body of well-established liberties and immunities enjoyed by the trueborn Englishmen.

The century or so during which the British colonized America was especially important in the development of British constitutional rights. A full century before Madison rose in the First Congress and proposed our American Bill of Rights, the British Bill of Rights had already come into being. It was the culmination of generations of struggle against the arbitrary government of the Stuart dynasty in England.

In the course of the eighteenth century, the question arose whether the residents of the thirteen American colonies were trueborn Englishmen and, as such, entitled to the traditional liberties and immunities enjoyed in the homeland. Since the King and Parliament of Great Britain were resolved upon giving a negative answer to this question, the colonies decided, in the year 1776, that the time had come to make a fresh start and to adopt a Declaration of Independence.

In one sense, the Declaration is a lineal descendant of the Magna Charta. But in another sense, it is a very different sort of document, a characteristic product of the Age of Reason. Instead of appealing to royal concessions and traditional immunities, it takes its stand upon self-evident truths, the laws of nature and unalienable rights. It was a new turn in human history. It was an experiment which had never been attempted. It is still on trial.

Our revolutionary forefathers had had their fill of royal governors, and of George III and his ministers, and so they forgot for a time one of the great lessons of constitutional history—that government must be strong for its proper ends. Many of the new state constitutions set up a hobbled and ineffectual executive branch. Our first attempt to create a national government, the Articles of Confederation, provided for no executive at all. Our attempt to operate under a weak government barely got us through the Revolutionary War. The return of peace began a drift which all clear minds perceived was toward anarchy. The inevitable and timely reaction brought about the Federal Convention of 1787, by which our present Constitution was submitted to the American people.

To the American people, the Constitution was a new and permanent legal basis for their government. They wanted nothing left to conjecture. They insisted upon concrete rights being set down in black and white. If government was to be strengthened, the more apparent became the need to delimit its proper powers, and to itemize the immunities which its citizens ought to enjoy. And so, directly upon the establishment of government under the Constitution, the First Congress submitted the Bill of Rights to the states.

Such, in the most practical way, is the process by which we acquired our Bill of Rights. If you have not read its provisions recently, I urge that you read and re-read them. They were never more important. The Bill of Rights contains only 462 words and can be read in only a few moments, but from the American viewpoint it embraces the wisdom of the ages as divined from man's struggle for freedom throughout civilization.

The liberties thus written into our fundamental law have not gone unassailed in the course of our national history, for men in office are still men. Whether men derive their authority from hereditary right or from popular election, they remain prone to overstep constitutional limitations and invade legal immunities. Periods of domestic dissension and of foreign war are especially liable to produce tendencies to disregard established rights in the name of national safety. Often the tendency persists after the danger which provoked it has passed away, and at such times Americans who cherish these rights have had to fight to vindicate them. The French Revolution, and the deep cleft of

opinion which it brought about in our country, led to the notorious Alien and Sedition Acts of 1798. When Thomas Jefferson succeeded to the Presidency three years later, he set free all those who had been imprisoned under what he regarded as an unconstitutional statute. Our Civil War saw the tendency to substitute military for civil tribunals, which the Supreme Court rebuked in the famous case of *Ex parte Milligan*<sup>2</sup> in 1866. World War I was followed by a wave of repressive measures, such as mass arrests without benefit of habeas corpus, which were strenuously opposed by the libertarians of that day. In our time, we have seen the greatest of wars give way to a decade of chronic tension and crisis in which it is to be expected that new encroachments upon traditional liberties may have to be encountered.

I have suggested that if there has been damage done to our traditional rights it has been accomplished by a process of erosion. Are the privileges and immunities summed up in our Bill of Rights in danger of loss through subtle changes in our climate of opinion? Is distrust of our fellow countrymen wearing away our traditional concept of the innate dignity of man?

These questions call for consistent and intense exploration far beyond the limits of this discussion, but because we are here on the campus of a great university, I would remind myself, and you, that if our other rights are to be of value to us we must first have the untrammelled right to search for the truth in institutions such as this, and then to teach it in accordance with the dictates of conscience. If that right should ever fail, so will our other blessings of liberty. That is precisely what has happened to people in other parts of the world, and in our time.

But I do not wish to end on a mournful note. Nor do I wish to suggest that our liberties are about to be lost. Erosion may have begun in some respects but the fabric of our liberties is still far from undermined. Surely the America that sent 12,000,000 men into a world war to preserve freedom everywhere will not allow its own freedoms to be frittered away. Surely the America that has poured out its substance to rehabilitate the free world, and even our former enemies, so that they can resist tyranny, will not willingly pass on to its children less freedom than it has itself enjoyed.

It has been sagely remarked that men more frequently require to be reminded than informed, and I hope that we may all join in the good work of reminding each other of how much we have to lose, and how heedless we would be to lose it. With a strong belief in the wholesomeness of our objectives and the courage to defend our freedoms, I have no doubt we shall preserve our heritage.

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2. 4 Wall. 2 (U.S. 1866).

Faith, the Apostle tells us, is the substance of things hoped for, the evidence of things not seen.<sup>3</sup> Faith in America confirms the hope that we shall preserve for our children all that our fathers, by the way of clear thinking, firm resolution, patient endurance and willing sacrifice secured for us; that our heritage of liberty will not dwindle but increase; and that we will prove worthy of what we have so abundantly received. It is such faith, I believe, that brings all of us together today to consider the "Blessings of Liberty."

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**3. HEBREWS 11: 1.**